

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

No. 17 BK 4780-LTS

SCIEMUS LIMITED, et al.

Plaintiffs,

-v-

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

Adv. Pro. No. 3:19-AP-369 LTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Defendant.

**INFORMATIVE MOTION REGARDING INSURERS' OBJECTION TO NOTICE
OF PRESENTMENT BY PUERTO RICO ELECTRIC POWER AUTHORITY
OF REVISED PROPOSED ORDER FOR UNDISPUTED PAYMENT AND
RELEASE OF INSURANCE PROCEEDS**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), as the representative of the Puerto Rico Electric Power Authority ("PREPA") in this Title III case pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), respectfully states as follows:

1. The Court has now been presented with two competing versions of a proposed order, each of which directs certain of PREPA's Insurers to promptly pay PREPA the undisputed loss amount of \$1,726,000 for loss resulting from damage to PREPA's property in 2015. PREPA and the Oversight Board, as PREPA's representative, are satisfied with either version of the proposed order, and request the Court allow this much-belated insurance payment.

2. By way of background, and as outlined in *Plaintiffs' Objection to Notice of Presentment by Puerto Rico Electric Power Authority of Revised Proposed Order for Undisputed Payment and Release of Insurance Proceeds* [Adv. Proc. No. 19-ap-369, ECF No. 42], following receipt of Insurers' amended complaint in *Sciemus Limited, et al. v. Puerto Rico Electric Power Authority*, Adv. Proc. No. 19-ap-369, PREPA, at Insurers' urging, filed a Motion for Undisputed Payment and Release of Insurance Proceeds [Adv. Proc. No. 19-ap-369, ECF No. 24]. The proposed order was negotiated with and approved by the Insurers. In response to comments from

certain of PREPA's bondholders, PREPA amended the proposed order, which was again approved in form by the Insurers. [Adv. Proc. No. 19-ap-369, ECF No. 28].

3. On December 26, 2019, PREPA filed its *Renewed Motion of Puerto Rico Electric Power Authority for Undisputed Payment and Release of Insurance Proceeds* (the "Renewed Motion")² [Case No. 17-3283, ECF No. 9653; Case No. 17-4780, ECF No. 1843; Adv. Proc. No. 19-ap-369, ECF No. 32] attaching the revised proposed order to which the Insurers agreed.

4. Specifically, the Renewed Motion requested entry of an order providing: (i) PREPA may accept from Plaintiffs ("Insurers") a payment of \$1,726,000 (the "Undisputed Payment") as an undisputed payment of insurance proceeds under certain commercial property insurance policies issued to PREPA by Plaintiffs for the policy period May 15, 2014 to May 15, 2015 (the "Property Insurance"); (ii) no creditors of PREPA or other parties shall be permitted to interfere with the transfer of the Undisputed Payment to PREPA or PREPA's use of the Undisputed Payment at its discretion; (iii) the Plaintiffs shall not be subject to claims of PREPA's existing creditors or third parties with respect to the Undisputed Payment, and payment to PREPA shall satisfy Insurers' obligations under the Property Insurance with respect to the amount so paid; (iv) no creditor of PREPA or other party shall have any claim against Plaintiffs in respect of the obligation so satisfied by payment of the Undisputed Amount of \$1,726,000; (v) Insurers shall not seek a refund, reimbursement, or claw-back of the Undisputed Payment or any portion thereof; (vi) Insurers retain all rights, remedies and defenses under the Property Insurance and at law; (vii) Defendants retain all further rights, remedies and defenses under the Property Insurance, including without limitation the right to seek additional amounts under the Property Insurance; and (viii) except as expressly stated therein, the Order shall not be interpreted to limit any party's rights.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Renewed Motion.

5. The deadline to file a response to the Renewed Motion was January 14, 2020. On January 17, 2020, after reviewing the docket and noting no responses were filed to the Renewed Motion, PREPA filed a *Certificate of No Objection Regarding Renewed Motion of Puerto Rico Electric Power Authority for Undisputed Payment and Release of Insurance Proceeds* [Case No. 17-3283, ECF No. 10171; Case No. 17-4780, ECF No. 1867; Adv. Proc. No. 19-ap-369, ECF No. 38].

6. On January 21, 2020, the Court entered an *Order Regarding Renewed Motion of Puerto Rico Power Authority for Undisputed Payment and Release of Insurance Proceeds* (the “January 21 Order”) [Case No. 17-3283, ECF No. 10253; Case No. 17-4780, ECF No. 1868; Adv. Proc. No. 19-ap-369, ECF No. 40]. The January 21 Order directed the Oversight Board to “either (i) file a revised proposed order that would limit the scope of paragraphs three and four of the Proposed Order to parties served with the Motion, or (ii) be prepared at the omnibus hearing scheduled for January 29, 2020, to identify legal and factual bases that would allow the Court, consistent with due process and applicable law, to grant the full scope of relief sought in paragraphs three and four of the Proposed Order.”

7. After receipt of the January 21 Order, PREPA contacted the Insurers again to discuss revisions to paragraphs 3 and 4 of the proposed order to meet the Court’s invitation. After waiting more than two business days, the Insurers responded with additional changes that (a) did not appear to fully address the Court’s questions about notice and scope of the proposed order and (b) added additional language to paragraph 2 of the proposed order,³ which the Insurers previously had approved in November, and which were unchanged by PREPA.

³ PREPA has no objection to the language added by Insurers to paragraph 2, but believes it late in the game to change this language now because the paragraph had remained unchanged for months, after notice and hearing on the motion.

8. Unable to reach a timely resolution, on January 24, 2020, PREPA filed its *Notice of Presentment by Puerto Rico Electric Power Authority of Revised Proposed Order For Undisputed Payment and Release of Insurance Proceeds* [Case No. 17-3283, ECF No. 10383; Case No. 17-4780, ECF No. 1877; Adv. Proc. No. 19-ap-369, ECF No. 41], with an objection deadline of January 31, 2020.

9. On January 30, 2020, Plaintiffs filed their *Objection to Notice of Presentment by Puerto Rico Electric Power Authority of Revised Proposed Order for Undisputed Payment and Release of Insurance Proceeds* (“Plaintiffs Objection”) [Case No. 17-4780, ECF No. 1887; Adv. Proc. No. 19-ap-369, ECF No. 42].

10. It is undisputed that the Insurers owe PREPA the sum of \$1,726,000 for losses PREPA sustained nearly five years ago, and it is also undisputed that Insurers’ amended complaint expresses the “desire to pay \$1,726,000 to PREPA.” [Adv. Proc. No. 19-ap-369, ECF No. 9, ¶ 45]. As such, while PREPA’s proposed order attempts to address the Court’s questions, PREPA has no objection to the revised proposed order presented by the Plaintiffs, insofar as PREPA is paid immediately upon entry of the order granting the Renewed Motion.

11. PREPA’s proposed order as submitted on January 24, 2020 is attached hereto as Exhibit A, and the redline proposed by Insurers on January 30, 2020 is attached hereto as Exhibit B.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 3rd day of February, 2020.

I HEREBY CERTIFY that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

Dated: February 3, 2020.
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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